



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. Robert P. Rose
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR94-870

Dear Mr. Rose:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28420.

The City of Austin (the "city") has received a request for information relating to a police investigation into allegations of injury to a child. Specifically, the requestor, who represents the mother of the child, seeks "a copy of the entire contents of your investigation." You have submitted the requested information to us for review and claim that section 552.101 of the Government Code excepts it from required public disclosure.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 34.08 of the Family Code, which provides as follows:

(a) Except as provided in Subsections (b) and (c) of this subsection, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Fam. Code § 34.08.¹

In Open Records Decision No. 587 (1991), this office held that section 552.023 of the Government Code cannot operate to give an individual a special right of access to information within the protection of section 34.08 of the Family Code. Recognizing the close connection and cooperation between child welfare agencies and agencies responsible for investigating and enforcing laws that criminalize child abuse, this office reasoned that section 34.08 was intended to protect not only privacy interests, but law enforcement interests as well. *Id.* at 3-4; *see also* Fam. Code § 34.05 (requiring department to report substantiated incidents of abuse to law enforcement agency); Open Records Decision No. 176 (1977) (concluding that section 34.08 protects the identities of informants). Hence, the city's law enforcement interests, reflected in section 34.08 of the Family Code, prevail over a person's special right of access under section 552.023 of the Government Code.

We understand that the requested information relates to a criminal investigation arising from an investigation initiated by the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 34.05. Disclosure of the requested information, or any part thereof, is authorized only for purposes consistent with the purposes of the Family Code under regulations adopted by the city.² We are not aware that the city has promulgated regulations authorized under section 34.08 of the Family Code. Accordingly, the city must withhold the requested information under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

¹Subsections (b) and (c), which provide for disclosure of investigative materials to adoptive parents and prospective adoptive parents, respectively, are not applicable in this instance.

²We note, however, that the Texas Department of Protective and Regulatory Services has promulgated a regulation, section 700.103, title 40 of the Texas Administrative Code, which governs release of Child Protective Services ("CPS") case information to CPS clients. Section 700.103 provides:

A child protective services client may *review* all information in the client's case record except the identity of the complainant, information exempted from disclosure under the Open Records Act, and information exempted under other state laws. [Emphasis added.]

See also 40 T.A.C. § 734.11 (governing the release of case record information that the department collects in determining eligibility to receive department services). Although we do not address here whether the requestor is a client of CPS for purposes of the above-quoted regulation, we do note that the requestor may be entitled to review the information in the possession of CPS under the regulation.

If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 28420

Enclosures: Submitted documents

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